

APPEAL NO. 161503
FILED SEPTEMBER 28, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 22, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the compensable injury of (date of injury), extends to left ulnar nerve entrapment but does not extend to a left wrist ligament tear or left wrist tendinitis; the first certification of maximum medical improvement (MMI) and assignment of impairment rating (IR) from (Dr. W), on August 26, 2014, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); the respondent (claimant) was not at MMI as of August 26, 2014; that because the claimant had not reached MMI as of August 26, 2014, an IR cannot be assigned; and the claimant had disability resulting from the compensable injury from February 3 through October 13, 2015.

The appellant (carrier) appealed the hearing officer's determinations that the compensable injury of (date of injury), extends to left ulnar nerve entrapment; that the first certification of MMI and assignment of IR did not become final; that the claimant was not at MMI as of August 26, 2014; that because the claimant had not reached MMI as of August 26, 2014, an IR cannot be assigned; and that the claimant had disability from February 3 through October 13, 2015, arguing that such determinations are contrary to the evidence.

The appeal file does not contain a response from the claimant to the carrier's appeal.

The hearing officer's determination that the compensable injury of (date of injury), does not extend to a left wrist ligament tear or left wrist tendinitis has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant, a flight attendant, was injured on (date of injury), when the airplane on which she was working encountered turbulence, causing the claimant to strike her left wrist, hand and forearm against the galley wall.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), that consisted of a left wrist sprain and that Dr. W, the treating doctor, determined that the claimant reached MMI on August 26, 2014, with no permanent impairment.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), extends to left ulnar nerve entrapment is supported by sufficient evidence and is affirmed. The fact that another fact finder may have drawn different inferences from the evidence which would have supported a different result does not provide a basis for us to disturb the challenged determination. *Salazar v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi, 1977, writ ref'd n.r.e.).

DISABILITY

The hearing officer's determination that the claimant had disability resulting from the compensable injury from February 3 through October 13, 2015, is supported by sufficient evidence and is affirmed.

FINALITY

Section 408.123(e) provides that except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means; that the notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c); and that the 90-day period begins on the day after the written notice is delivered to the party wishing to dispute a certification of MMI or an IR assignment, or both.

Section 408.123 also provides in part:

(f) An employee's first certification of [MMI] or assignment of an [IR] may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR];

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The hearing officer found that Dr. W's August 26, 2014, MMI/IR certification was the first valid certification for purposes of Rule 130.12(c); that Dr. W's August 26, 2014, MMI/IR certification was provided to the claimant by verifiable means on September 9, 2014; and that the claimant did not dispute the first valid certification by Dr. W within 90 days following the date such certification was provided the claimant by verifiable means. These findings of fact are supported by sufficient evidence.

The hearing officer determined that the first MMI/IR certification from Dr. W on August 26, 2014, did not become final under Section 408.123(f)(1)(B) and Rule 130.12 because "the medical information is compelling enough to equate [to] a finding of an undiagnosed condition of the left ulnar entrapment." We disagree that this case presents compelling medical evidence of a previously undiagnosed medical condition. The claimant sought medical attention at several urgent care clinics between June 17, 2014, and July 8, 2014, where she was diagnosed with left wrist pain, a hand contusion and ulnar nerve radicular pain. On July 21, 2014, she came under the care of Dr. W, her treating doctor, whose records diagnose a left ulnar injury through March 20, 2015, the date of Dr. W's last record in evidence. On March 10, 2015 and April 10, 2015, the claimant was seen by (Dr. C) who diagnosed injury of the ulnar nerve and who recommended decompression of the nerve. On June 5, 2015, the claimant underwent left ulnar nerve decompression surgery performed by (Dr. We).

We hold that under the facts of this case which reflect consistent diagnosis by the claimant's medical providers of injury to the left ulnar nerve, including Dr. W in his DWC-69 dated August 26, 2014, ulnar nerve entrapment is not a previously undiagnosed condition and that no exception applies which would allow the claimant's first valid certification of MMI/IR to be disputed after expiration of the period described in Section 408.123(e). Accordingly, we reverse the hearing officer's decision that the first certification of MMI and assigned IR from Dr. W on August 26, 2014, did not become final under Section 408.123 and Rule 130.12 and render a new decision that the first certification of MMI and assigned IR from Dr. W on August 26, 2014, did become final under Section 408.123 and Rule 130.12.

MMI/IR

Because we have reversed the hearing officer's decision that the first certification of MMI and assigned IR from Dr. W on August 26, 2014, did not become final under Section 408.123 and Rule 130.12 and have rendered a new decision that the first certification of MMI and assigned IR from Dr. W on August 26, 2014, did become final

under Section 408.123 and Rule 130.12, we also reverse the hearing officer's decision that the claimant was not at MMI as of August 26, 2014, and render a new decision that the claimant reached MMI on August 26, 2014, as certified by Dr. W on August 26, 2014. We further reverse the hearing officer's determination that because the claimant was not at MMI as of August 26, 2014, an IR cannot be assigned and render a new decision that the claimant has no permanent impairment as certified by Dr. W on August 26, 2014.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), extends to left ulnar nerve entrapment.

We affirm the hearing officer's determination that the claimant had disability resulting from the compensable injury from February 3 through October 13, 2015.

We reverse the hearing officer's decision that the first certification of MMI and assigned IR from Dr. W on August 26, 2014, did not become final under Section 408.123 and Rule 130.12 and render a new decision that the first certification of MMI and assigned IR from Dr. W on August 26, 2014, did become final under Section 408.123 and Rule 130.12.

We reverse the hearing officer's decision that the claimant was not at MMI as of August 26, 2014, and render a new decision that the claimant reached MMI on August 26, 2014, as certified by Dr. W on August 26, 2014.

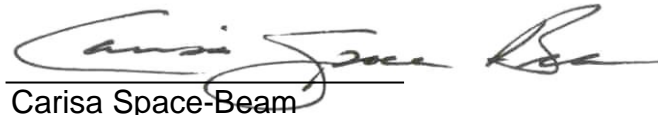
We reverse the hearing officer's determination that because the claimant was not at MMI as of August 26, 2014, an IR cannot be assigned and render a new decision that the claimant has no permanent impairment as certified by Dr. W on August 26, 2014.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR

A handwritten signature in cursive script, appearing to read "Carisa Space-Beam", written over a horizontal line.

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge